



Filing Receipt

Received - 2021-09-07 01:30:28 PM
Control Number - 51830
ItemNumber - 30

PROJECT NO. 51830

REVIEW OF CERTAIN RETAIL	§	PUBLIC UTILITY COMMISSION
ELECTRIC CUSTOMER PROTECTION	§	
RULES	§	OF TEXAS

REPLY COMMENTS OF OCTOPUS ENERGY

Evolve Retail Energy LLC d/b/a Octopus Energy (Octopus Energy), REP License #10262, files these reply comments in response to the Proposed Amendments to 16 Texas Administrative Code (TAC) §§ 25.43, 25.475, 25.479, and 25.498 and addition of 16 TAC §24.499 published the Public Utility Commission of Texas (Commission or PUCT) in the Texas Register on August 13, 2021.¹

Executive Summary

1. The Commission should not prohibit all indexed retail products for residential and small commercial customers.
2. The Commission should clarify §25.475(e)(2)(C) to require the first contract expiration notice for contracts with a term of more than 12 months to be sent approximately 3 months before the end of the contract, with the subsequent two notices being sent approximately two and one month before the termination of the contract.

COMMENTS

Introduction

In its Initial Comments, Octopus Energy focused on three key issues:

1. The Commission should not prohibit all indexed retail products for residential and small commercial customers.
2. The Commission should clarify §25.475(e)(2)(C) to avoid the unintended result that the revised rules could mandate that a REP extend the term of an above-market long-term product without the consent of the customer by failing to give the required expiration notice.
3. The Commission should clarify §25.475(e)(3)(A) to require a REP to provide on a monthly basis clear notice of the price applicable to a default renewal product before that product goes into effect for a customer each month.

¹ 46 TexReg 4937 (August 13, 2021).

In these reply comments, Octopus Energy will respond to comments regarding the first two issues and continues to encourage the Commission adopt the proposed changes on the third issue. Moreover, Octopus Energy respectfully recommends that a REP provide notice of the price a customer will pay pursuant to any variable rate product before the start of the next monthly pricing period.

Responses to Commission Questions

2. Do the acknowledgement of risk requirements in proposed §25.475(c)(3)(G) and §25.475(j) provide adequate customer protections for residential and small commercial customers that enroll in indexed retail electric products and retail electric products that allow for the pass-through of ancillary service charges? If not, should these products be prohibited for residential and small commercial customers?

Octopus Energy agrees with the comments of Texas Energy Association for Marketers (TEAM) opposing the Commission's proposal to go beyond the limited requirement of HB 16 and ban all indexed products.² Octopus Energy also agrees with Robert Borlick that a broad prohibition against all indexed products would reduce the development of demand response in the residential and small commercial customer classes and reduce reliability of the ERCOT grid.³ As the Commission considers how it can increase demand response in the residential and small commercial customer classes in Project No. 52373, the Commission should reject suggestions in this rulemaking that it eliminate price signals that are a key means to encourage customers to reduce their demand at critical times.

Octopus Energy strongly rejects the recommendations of the Office of Public Utility Counsel (OPUC) and Texas Legal Services Center and AARP Texas that the Commission prohibit

² Texas Energy Association for Marketers' Response to Request for Comments on Proposal for Publication at 4-5, Aug. 27, 2021. (TEAM Comments).

³ Revised Comments of Robert L. Borlick at 2-3, Aug. 30, 2021. (Borlick Comments).

all indexed products for residential and small commercial customers.⁴ As Octopus Energy noted in its Comments, Octopus Energy has helped our customers save 20-40% off the average price of electricity through its wholesale index price product by giving customers a large savings when they buy during the cheapest times and enabling them to respond to higher prices by using technological solutions similar to those that large industrial customers can obtain from the competitive market.⁵ Encouraging this customer behavior not only directly benefits each customer individually, but also benefit all other customers on the ERCOT grid by reducing load at critical times which cumulatively should result in lower wholesale prices for the benefit of all customers.

In addition, contrary to OPUC's assumption that customers do not actually understand what they are agreeing to when they sign up for a product or acknowledge the contents of a waiver, Octopus Energy's experience is that our customers do understand the wholesale indexed product that they sign up for. And while some customers may not want to be on an indexed product or may not understand the benefits and risks associated with these products, that does not mean that all customers should be prohibited from purchasing those products as recommended by TLSC and AARP.⁶ To the contrary, this is a decision that should be left to informed customers to make rather than the outcome being dictated by the heavy hand of government regulators. Octopus Energy has taken the customer friendly approach that, in the event a customer decides that the product is not for them, those customers may switch to a fixed rate product without penalty. Octopus Energy strongly supports clear and transparent communications with customers to ensure that customers

⁴ Office of Public Utility Counsel's Initial Comments on Commission's Proposal for Publication at 3-4, Aug. 27, 2021. (OPUC Initial Comments); Texas Legal Services Center AARP Texas Initial Comments on Proposal for Publication of Amendments of 16 TAC §25.43, 25.471, 25.475, 25.479, and 25.498 and new §25.499 as Approved at the July 29 Open Meeting at 5-6 and 12, Aug. 27, 2021. (TLSC/AARP Comments).

⁵ Comments of Octopus Energy at 3-5, Aug. 27, 2021. (Octopus Comments).

⁶ TLSC/AARP Comments at 6-7 and 12.

knowingly participate in the ERCOT competitive retail electricity market and purchase products that meet their goals and objectives.

Rather than banning all index products, Octopus Energy recommends the Commission consider what appropriate safeguards should be required when a customer signs up for an indexed product – such as the Acknowledgement of Risk the Commission proposed in the rule. As Octopus Energy noted in its Comments, in other countries where Octopus Energy offers wholesale index retail products, it caps its customers' exposure to high wholesale rates, and this is a safeguard Octopus Energy would support being implemented in the ERCOT market as well.

Comments on Proposed Amendments to Commission Rules

§25.475. General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers.

§25.475(e)(2)(C): Octopus Energy agrees with TEAM's recommendations that, for contracts with terms of 12 months or longer, a REP should send the first contract expiration notice approximately 3 months prior to the contract end date.⁷ Octopus Energy further would recommend that the additional two written notices be sent approximately two and one month prior to the termination of the contract. If the Commission agrees with this approach, consistent with Octopus Energy's recommendations in its Initial Comments, the Commission also should allow a REP to extend an existing contract only by up to 3 months in the event they failed to provide appropriate notice of the original expiration date.⁸

§25.475(i): In their comments, TLSC and AARP recommend changes to the Acknowledgement of Risk to modify the Commission's proposed language in subsection (i)(2) and add an additional paragraph.⁹ Octopus Energy respectfully disagrees with the proposed

⁷ TEAM Comments at 24-25.

⁸ Octopus Comments at 6.

⁹ TLSC/AARP Comments at 19-20.

changes. First, the restructured language is less clear than what the Commission has proposed to adopt. Second, the fact that a customer is signing up for a new plan indicates that the customer already knows how to switch electricity plans, so the second sentence of the additional waiver language is superfluous. Finally, the last sentence of the proposed revised language may actually mis-inform a customer about their rights and obligations under their contract for service by conveying the notion that a customer can switch REPs in order to avoid higher charges that the customer has already incurred and that lower priced plans will be available at the very time there are higher charges in the market. A customer is responsible for paying the costs for services it has received, and an inference that those costs can be avoided by switching REPs generally is incorrect. Moreover, as some customers realized when they tried to switch REPs during Winter Storm Uri, lower cost products were not always available. As a result, the Commission should reject the proposed additional language TLSC/AARP proposed.

Proposed Notice Regarding Price of Default Renewal Product and All Variable Products: In its Initial Comments, Octopus Energy recommended that the Commission should clarify §25.475(e)(3)(A) to require a REP to provide on a monthly basis clear notice of the price applicable to a default renewal product before the price for that product goes into effect for a customer each month.¹⁰ Octopus Energy continues to strongly recommend that the Commission include that clarification in the rule it adopts as a result of this rulemaking. In addition, Octopus Energy recommends that the Commission make this price disclosure a requirement for any variable price product sold to residential and small commercial customers, as well as customers who rolled onto such a product prior to the effective date of HB 16. By their nature, these products have rates that can change on a monthly basis. This additional price clarity will ensure that customers have

¹⁰ Octopus Comments at 6-9.

a better understanding of what they will pay for their service the next month.

CONCLUSION

Octopus Energy appreciates the opportunity to provide these reply comments. Octopus Energy looks forward to working with the Commission and interested parties on these issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael J. Jewell", with a long horizontal line extending to the right.

Michael J. Jewell
Jewell & Associates, PLLC
State Bar No. 10665175
8404 Lakewood Ridge Cove
Austin, TX 78738
(512) 423-4065
(512) 236-5170 (FAX)

ATTORNEY FOR OCTOPUS ENERGY